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DISTRICT COURT OF GUAM

JAN 25 2005 X

**MARY L.M. MORAN
CLERK OF COURT**

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5 Attorneys for Petitioner

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7 DISTRICT COURT OF GUAM
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9 TERRITORY OF GUAM

10 JULIE BABAUTA SANTOS, et al.,) CIVIL CASE NO. 04-00006
11 Petitioners,)
12 vs.) PETITIONER'S LIST OF
13) EXHIBITS
14 FELIX A. CAMACHO, etc., et al.,)
15 Respondents.)
16 _____)

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>NOT ADMITTED</u>	<u>ADMITTED</u>
1	Pacific Daily News Article March 12, 2003 "Tax Credit In Legal Limbo"		
2	Executive Order No. 2005-01		
3	Pacific Daily News Article January 13, 2005 "Rev & Tax Ordered To Take Claims For EITC"		

22 Dated this 25th day of January 2005.

23 PHILLIPS & BORDALLO, P.C.

24 By:

25 Michael F. Phillips


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Wednesday, March 12, 2003

Tax credit in legal limbo

By Gaynor Dumatol Dahleno
Pacific Daily News

Guam's income tax form forbids island taxpayers from claiming the Earned Income Credit, which has allowed low-income workers elsewhere in the country to pay less tax or receive a refund.

A space where Guam taxpayers are supposed to claim the special credit, or EIC, is blacked out with "Not Applicable."

Deputy Tax Commissioner John Camacho mentioned several reasons why the Department of Revenue and Taxation bars taxpayers from claiming the EIC. Among them:

- The department does not have money to pay the EIC, which cost about \$18 million the last time it was paid to Guam taxpayers in 1997.
- A 1996 decision by

COMING TOMORROW

All about W2s: What to do if you lost or haven't received your W2.

THE LAW

- Guam Public Law 24-61 says:

"For Fiscal Year 1998 and each year thereafter the Department of Revenue and Taxation is authorized on a continuing basis to spend funds from the provisions of refunds ... in such amounts as are necessary to pay the Earned Income program subsidies ... up to a maximum amount for any fiscal year of Fourteen Million Dollars (\$14,000,000.00).

THE RULING

- To read the Guam Supreme Court ruling, go to www.justice.gov.gu/supreme/op2001Guam03.htm

TAX FILING

The deadline for tax filing is April 15. The department's office at Tiyan will close its office at 4 p.m. but a drop box will accept completed tax returns for seven more hours, or until midnight.

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Joey Duenas, tax commissioner at the time, said that the federally mandated EIC does not apply to Guam, and the department continues to follow that decision today.

The department's position contradicts a Guam Supreme Court ruling and a local law that essentially say Guam taxpayers are entitled to the same credit that U.S. taxpayers receive elsewhere.

Guam taxpayers are missing out on the EIC. According to wire reports, it gives an increased maximum credit for the 2002 tax year of \$4,140 for families with two or more qualifying children, \$2,506 for families with one qualifying child and \$376 for an individual without children.

"The Earned Income Credit (EIC) is a special credit for lower income workers," according to the Internal Revenue Service Web site, www.irs.gov.

"The credit is subtracted from the amount of tax you owe, so you end up paying less tax and you may get some money back from the government," according to the IRS. "Even if you do not have a tax liability, you might still get some money back."

According to the IRS, a taxpayer can qualify for the credit for tax year

2002 if the taxpayer's earned income and adjusted gross income are less than the following amounts:

- \$11,060 (\$12,060, if filing a joint return) if you do not have a qualifying child.
- \$29,201 (\$30,201, if filing a joint return) if you have one qualifying child.
- \$33,178 (\$34,178, if filing a joint return) if you have two or more qualifying children.

Taxpayer challenge

Camacho acknowledged that the department's stand on the EIC is open for taxpayer challenge in a court setting.

But Camacho said the issue is best resolved in District Court, a federal court.

Island taxpayers who decide to challenge the department can back up their case with a Guam Supreme Court ruling and a local law in their favor.

The Guam Supreme Court in February 2001 ruled that Guam taxpayers are entitled to EIC, and stated that the Department of Revenue and Tax director is bound by law to pay the EIC to eligible Guam taxpayers.

Gov. Carl Gutierrez's administration had

argued that the EIC does not apply to Guam since its funding in the continental United States is paid by Social Security taxes and Congress has not appropriated such funding to pay for the EIC on Guam.

"The governor suggests that the absence of any mention of the EIC's applicability to Guam indicates that 'Guam never crossed anyone's mind,'" according to the 2001 court ruling.

The high court disagreed with the then governor's arguments.

"The fact that Guam does not pay certain Social Security taxes should not prevent low-income families, who reside on Guam, from being paid the refundable EIC when there is no indication from Congress that, in designating the beneficiaries of this tax program, Guam low-income families were to be excluded," according to the court.

The court ruling was issued in a case filed by now Speaker Ben Pangelinan. Pangelinan said yesterday he hopes that new Gov. Felix Camacho's administration will review a local law that says Guam taxpayers are entitled to EIC.

The credit is meant to supplement low wages -- especially in the private sector -- to keep people in the work force while at

the same time supporting their families, according to Pangelinan.

Guam Public Law 24-61 authorized a Guam EIC program that mirrors the federal program.

The law states that, for fiscal 1998 and each year thereafter, the Department of Revenue and Taxation is authorized on a continuing basis to spend money from a tax refund fund to pay the Guam EIC program.

The law states that the annual amount for EIC payments must not exceed \$14 million.

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OFFICE OF THE GOVERNOR
HAGATNA, GUAM 96910
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EXECUTIVE ORDER NO. 2005-01

**RELATIVE TO FILING EARNED INCOME TAX CREDIT CLAIMS
WITH THE DEPARTMENT OF REVENUE AND TAXATION**

WHEREAS, the Guam Territorial Income Tax is established in the Organic Act of Guam to mirror the federal Internal Revenue Code in most, but not all, respects, as a tax that is collected by and payable to the government of Guam; and

WHEREAS, the Earned Income Tax Credit ("EITC") was enacted by the United States Congress in 1975 as a subsidy to the working poor as an extension of social welfare benefits; and

WHEREAS, the federal EITC is funded in the Fifty States in part through the collection of Social Security taxes, which are not collected by the government of Guam and therefore are not available to fund payment of the EITC in Guam absent federal action; and

WHEREAS, in 1996, under the previous administration, the Department of Revenue and Taxation ("DRT") issued Revenue Ruling No. 96-001, which provided that the EITC was not applicable in Guam, it should not be administered by DRT, and DRT should not certify to the Department of Administration ("DOA") for payment the amounts of EITC cash refunds reported by Guam taxpayers on their Guam individual income tax returns; and

WHEREAS, pursuant to Revenue Ruling No. 96-001, and with the exceptions of tax years 1997 and 1998, DRT has in most cases not accepted filings that claimed the EITC; and

WHEREAS, in response to Revenue Ruling No. 96-001, the Legislature has passed a number of laws intended to mirror the federal EITC, including the Guam Earned Income Program, but there presently is no funding of the EITC on Guam; and

WHEREAS, the government of Guam wishes to promptly and efficiently determine which taxpayers claim eligibility for the EITC and whether such claims are otherwise valid under the laws of Guam and/or the United States, regardless of legal disputes over the applicability of the EITC on Guam and regardless of issues over the lack of availability of funding for payment of EITC claims; and

WHEREAS, taxpayers should not have to bear the primary burden of determining whether they are eligible for the EITC in past tax years, or in what amounts, and to expect them to do so could at a minimum require them to obtain copies of all relevant back years' tax returns, at substantial cost and burden to both taxpayers and DRT; and

WHEREAS, the use of a new simplified claim form for EITC claims, which requires only information not already known to DRT from taxpayers' previously submitted tax returns, would minimize the burden on taxpayers of making EITC claims and would allow DRT to determine the eligibility and calculate the amount of the legitimate claims of each taxpayer submitting the simplified form in the fastest possible time; and

WHEREAS, a new simplified claim form can be designed to support a computerized tracking system that will automatically identify duplicative, mutually inconsistent, and otherwise improper claims (specifically including fraudulent claims regarding qualifying children and head



of household status) thereby preventing overpayments and facilitating the prosecution of false or fraudulent claims; and

WHEREAS, the Governor urges the federal government to fund the EITC on Guam to establish equality between the rights of taxpayers residing in the United States and its territories, but will work in the meantime with the Legislature to pass an appropriation or bond to fund the payment of otherwise valid but unpaid claims for the EITC.

NOW, THEREFORE, I, FELIX P. CAMACHO, *I Maga'åhaen Gudhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do order as follows:

1. The Department of Revenue and Taxation ("DRT") shall begin accepting claims for the Earned Income Tax Credit pursuant to the Guam Earned Income Program, 11 G.C.A. §§ 42101-04, as soon as forms described in paragraph 2 below can be promulgated and printed, and in no event later than January 31, 2005.
2. Pursuant to the authority vested in it by 11 G.C.A. §§ 42102 and 42103, DRT shall prepare simplified forms to permit submission of EITC claims for tax years 1995-1996 and 1999-2004, together with explanatory materials as necessary to inform taxpayers about the procedures and plans for administration of such claims. The simplified forms shall require only information not already provided to DRT in tax returns and necessary for DRT to determine taxpayers' eligibility, calculate the amount of taxpayers' legitimate claims, and detect duplicative, mutually inconsistent, and fraudulent claims. Submission of a claim under the Guam Earned Income Program shall constitute submission of a claim for the federal EITC to the extent the federal EITC applies to Guam. However, any taxpayer who has not yet filed a tax return as to a given tax year shall be required to file that tax return for that tax year along with the simplified EITC claim form in order to be eligible for the EITC under the Guam Earned Income Program for that tax year.
3. DRT shall use the information submitted by taxpayers on the form described in paragraph 2, together with information already in DRT's possession, to determine taxpayers' eligibility, calculate the amount of taxpayers' legitimate claims, and promptly communicate that information to taxpayers submitting the form. Submitted information must be truthful, and the form shall require that its contents be submitted under penalty of perjury. The provisions of 26 U.S.C. § 32(k) will in all other respects apply to claims under the Guam Earned Income Program pursuant to 11 G.C.A. § 42102.
4. To detect duplicative, mutually inconsistent, and fraudulent claims, DRT shall institute a computer-based tracking system to compare the information submitted by each taxpayer on the form described in paragraph 2 to other information submitted by the same and other taxpayers, with particular emphasis on preventing the submission of false or incorrect claims regarding qualifying children or head of household status.
5. DRT shall make a preliminary determination of eligibility and shall calculate the proper amount of the claim for each claim submitted on the form described in paragraph 2, pursuant to all governing laws including DRT's procedures for auditing tax returns and claim forms as necessary, but in no case shall DRT pay any such claim until lawful funding is determined and made available.
6. The Directors of DOA, DRT, and the Bureau of Budget and Management Research ("BBMR") are instructed to begin immediately the implementation of 11 G.C.A. §§ 50101-07 and 51101-08 to the degree compliance with the current budget law, P.L. 27-106, can be achieved. In all future years, the Directors of DOA, DRT, and BBMR are instructed to implement 11 G.C.A. §§ 50101-07 and 51101-08 without reservation.
7. Nothing in this Executive Order or in the processing of an EITC claim pursuant to this Order shall entitle any claimant to payment for the EITC and nothing shall relieve any



claimant of the requirements of the Internal Revenue Code (including without limitation 26 U.S.C. §§ 32(k), 7206, and 7207) or the Guam Territorial Income tax with regard to claims for tax refunds, claims for the EITC, or any other applicable laws.

8. Revenue Ruling 96-001 is revoked to the degree it is inconsistent with this Order.

SIGNED AND PROMULGATED at Hagåtña, Guam this 11th day of January, 2005.

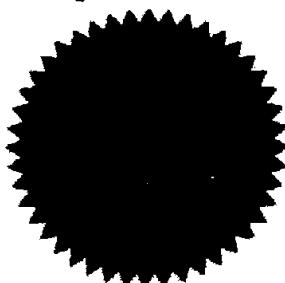
A handwritten signature in black ink, appearing to read "Felix P. Camacho".

FELIX P. CAMACHO
I Maga' Iihen Gedhan Para Pago
Governor of Guam

COUNTERSIGNED

A handwritten signature in black ink, appearing to read "Mary Forbes".

MARY FORBES
I Segundo Maga Iihen Gedhan Para Pago
Acting Lieutenant Governor of Guam



Pacific Daily News

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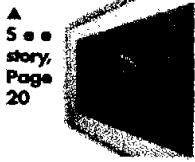
How would you rate your confidence in the doctors at GMH?

Results from yesterday's PDN poll are on Page 2.

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Pacific art

In Mas Pika, check out the latest in the local arts scene and the exhibits opening this weekend.



Inside

▲ New mad cow case confirmed

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FBI tapes allege bribery

By Katie Worth

Pacific Daily News
kworth@guampdn.com

SAN FRANCISCO — On the second day of the federal trial of former high-ranking government of Guam official Gil Shinohara, the prosecution showed an FBI video of Shinohara accepting what they alleged was a \$13,000 bribe from Guam businessman Kuen Yil Kim.

But the defense heatedly argued the money was an above-board loan, and if Kim, president of construction firm Rex International Inc., thought otherwise, he was simply mistaken.

SHINOHARA ON TRIAL

The prosecutors also said later in the trial they will show an FBI video of Shinohara accepting what they described as a \$5,000 cash bribe from former Sen. Willy Flores.

In turn, defense attorney Michael Green of Hawaii

said the bribe allegation will be debunked, and said Shinohara remained firmly above-board during 10 months of Flores' "relentlessly" attempting to get him to accept a bribe on tape in order to get out of his own troubles with the FBI. Shinohara also is being defended by Guam attorney David Lujan. Yesterday was the second

▲ See Trial, Page 4



▲ The second day of Gil Shinohara's federal trial in San Francisco proceeded yesterday with the prosecution's and defense's opening statements. Witnesses Barbara Santos Howard, formerly of the Department of Administration, and FBI agent Steve Moore testified.

Hospital woes worry residents



Masako Watanabe/Pacific Daily News/mwatanabe@guampdn.com

Newborn son: Angelica Starr, 19, hands her newborn, Zeak Jerome Starr Villanueva, to her boyfriend Vince Villanueva, 23, after the mother and son were discharged from the Guam Memorial Hospital maternity ward. Vince Villanueva said he thinks problems with the hospital that some surgeons are complaining about should have been taken care of a long time ago. A Guam Board of Medical Examiners meeting yesterday addressed the issue.

▲ See story, Page 3

Violence threatens relief

Aid workers were warned by Indonesia's government Wednesday to declare travel plans or face expulsion from the country's tsunami-devastated Aceh province. Security concerns threaten to hamper efforts to deliver aid. The military has warned that rebels could rob

aid convoys and use refugee camps as hideouts. Wary of Indonesia's sensitivities, U.S. Marines have scaled back their plans to send hundreds of troops ashore to build roads. The bulk of the Marines' mission has become ferrying aid workers and transporting food.

INSIDE
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Village resources moved

Newly elected Barrigada Mayor Jesse Palican has discovered that two vehicles and a generator were transferred to the Yona mayor by then-Barrigada Mayor Peter Agupon. Palican said a dump truck, a Chevy SUV and a genera-

tor were transferred from Barrigada. "Most of it's still around, but we're still doing our inventory. We're finding things as we go, but it's too premature," he said. Palican said he would like to get the vehicles back.

INSIDE
▲ See story
Page 2



▲ The governor issued an executive order yesterday authorizing the Department of Revenue and Taxation to accept claims for a tax credit for the working poor. But whether there would be enough money for the claims remains unknown.

Agana Shopping Center

"Your First Choice
For All Your Shopping Needs!"

Trial: Defense says transactions were loans

▲ Continued from Page 1

day of trial for Shinohara, who the U.S. Attorney's Office has charged with accepting bribes, money laundering and conspiring to defraud the Federal Emergency Management Agency. The trial is taking place in San Francisco because the defense has said publicity about the case on Guam would have tainted the jury and prevented a fair trial.

The same indictment, handed down by a grand jury last February, accused Shinohara of various bank fraud and money laundering charges related to his business transactions surrounding the Pedro's Plaza property in Hagåtña. Kim and Flores have been called unindicted co-conspirators in this case. However, at the defense's request, these charges are to be tried separately.

The video of the alleged transaction with Kim, part of the evidence from the prosecution, was shown to the jury during the examination of FBI special agent Steve L. Moore.

Shinohara remained emotionless while watching the video.

Opening statements

The day began with both the prosecution and defense making their opening statements.

In his opening statement, Assistant U.S. Attorney Joe Wilson laid out the government's case to a 12-person jury and three alternate jurors.

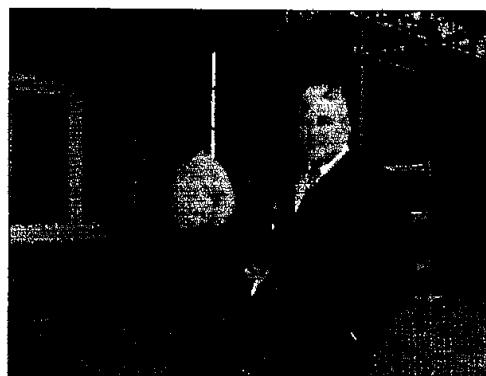
All of the charges have to do with Shinohara allegedly abusing his position as a government of Guam official for his personal gain or the gain of his friends, Wilson said.

In one of the three bribery charges, the federal government alleges Shinohara accepted a \$13,000 bribe from Kim, Wilson said. Wilson told the seven women and five men on the jury that Shinohara was, at the time, acting director of the Department of Public Works. He said Kim's company, Rex International, was trying to get the government to pay its debt to the company for a more than \$16 million Route 16 underpass project.

In April of 1999, Wilson said, when Shinohara was special assistant to former Gov. Carl Gutierrez, he had allegedly "asked Kim for a loan, telling him that a friend needed to make payroll and he needed \$10,000."

Kim "wanted to stay in the good graces" of Shinohara because Shinohara was in charge of Public Works, which grants government contracts, Wilson continued, so Kim purchased a cashiers' check for the money and allegedly gave it to the defendant.

In November of the following year, Wilson alleged, "the defendant



Katie Worth/Pacific Daily News/kworth@guampdn.com

Courthouse: Gil Shinohara, right, stands outside the Phillip Burden Federal Courthouse Monday in San Francisco. A supporter of Shinohara, Adolf Eli, left, from Palau, attended the first day of the trial.

was coming back. He wanted another run. He wanted another \$13,000."

This time, the transaction, which allegedly occurred at Kim's office, was documented by FBI video and audio recorders. On the video, which was shown to the jury later in the day, Wilson said, Shinohara can be heard saying: "Jack it up so you can take care of my thing."

The video shows Kim writing the check and Shinohara accepting it, the prosecution alleged. Shinohara then allegedly signed a promissory note to Kim for both the \$10,000 and the \$13,000, though that note wasn't collected by FBI agents after the alleged transaction and cannot be produced as evidence, Wilson said.

The prosecution also accused Shinohara of laundering the money, or trying to hide its origin, by allegedly cashing the \$13,000 check at one bank and then depositing it along with other funds into his personal account at First Hawaiian Bank.

This "so-called loan," Wilson said, was transacted "in a way to conceal the ownership and the source of these funds."

The second piece of videotaped evidence the prosecution intends to show the jury, Wilson said, is a video and audio recording of an alleged transaction between Shinohara and Flores that occurred on Dec. 2, 2002.

He said Flores had agreed to work with the federal government's investigators and willingly audio- and videotaped interactions with Shinohara between June 2002 and April 2003.

Flores allegedly approached Shi-

nohara and offered to pay him a bribe if Shinohara would facilitate the payment of a \$10 million government debt to Maeda Pacific Corp., which had contracted Flores to lobby for the payment, Wilson said.

"Over the course of about three meetings, the defendant agreed to do that," he said.

On Dec. 2, Wilson said, Flores and Shinohara met in a hotel room and Shinohara allegedly accepted about \$5,000 in cash.

"The defendant is a man of some sophistication," Wilson said. "The words from the mouth is no, no, no. But his hands are counting the money and he puts it in his pocket."

Defense

Defense attorneys said the transactions described as "bribes" by the prosecution were not bribes at all, but loans.

Defense attorney Green said there is no proof that the transaction between Kim and Shinohara was a bribe or that Kim was granted any favors after receiving the money.

Further, he told the jury, an FBI report from late 2000 said that Kim told FBI agents that Shinohara was his friend and Kim would be giving him the money regardless of whether the FBI was involved or not.

In an interview after the trial yesterday, Green said that even if Kim had given Shinohara the money with the intention of receiving a favor, it doesn't prove that it was a bribe.

"I say to you that I want to borrow some money from you, and you think, '(Expletive), I better give this guy the money because he's a powerful guy,'" Green said. "Unless

SHINOHARA ON TRIAL

WHAT'S NEXT

▲ The federal trial against former high-ranking official Gil Shinohara will continue at 7:45 a.m. today in a federal court in San Francisco. The defense's cross examination of FBI special agent Steve Moore is expected to continue. The prosecution also plans to call a number of witnesses, including former Sen. Willy Flores and businessman Takahisa Goto.

Concrete Builders, had been pitching the bus shelter project to Shinohara before the typhoon hit.

Tanaka ran a full-page advertisement in the Pacific Daily News on Dec. 4, 1997, asking Guam residents to vote for Shinohara's boss, then-Gov. Gutierrez, whom Tanaka had run against just a few years before. Wilson said this was an alleged attempt to get the contract.

After the typhoon, Gutierrez signed an emergency declaration and an agreement was made immediately thereafter to give Tanaka's company the bus shelter contract with the understanding that FEMA would later reimburse the government, Wilson alleged.

The problem was that FEMA and Guam regulations require, even in emergency situations, three different informal bids on a project, Wilson said.

Wilson also called former Department of Administration supervisor Barbara Santos Howard to testify and discuss various government of Guam and FEMA documents and procedures in the procurement of contracts and services. Howard now works as a supervisor at the Bureau of Budget and Management Research.

The prosecution alleges that Shinohara, after the \$1.9 million contract was signed with Tanaka's company, solicited bids from two other companies and allegedly asked them to back-date the bids to immediately after the typhoon, so it appeared as if the contract had been granted in accordance with proper procurement laws.

Further, the contract required — and FEMA expected — the bus shelters to be anchored into the ground, which they never were, Wilson said.

Tanaka has been charged with misprision of a felony for this alleged illegal contract, and in April last year reached a plea agreement with federal officials. Pacific Daily News files state.

Files state that at the time, he faced up to three years in prison after pleading guilty to entering into an illegal contract with the government of Guam and then trying to cover it up. Wilson yesterday said Tanaka has yet to be sentenced.

Green argued that the two competing bids may have been back-dated, no harm was actually done because Tanaka's bid was lowest and the cost of the shelter project wasn't reimbursed by FEMA until months after the other bids were provided anyway.

"It sounds bad when you talk about back-dating, but the best price was selected and the lowest price was selected, and FEMA didn't reimburse it until six months later," Green said.

EITC: Funds needed to pay credit unidentified

▲ Continued from Page 1

the tax credit for the working poor has been authorized, it remained unclear whether there's enough money to make the payments.

When asked yesterday where the payment would come from, Erica Perez, spokeswoman for the governor, referred to a press release stating

that Camacho would work with the Legislature "to come up with a solution to get payments out quickly."

The former administration stopped paying the tax credit in 1998, calling it an unfunded federal mandate.

A current settlement to pay about \$60 million — about half of the estimated amount owed to taxpayers over nine years — is caught in

a legal dispute. The settlement was between some taxpayers represented by local attorney Mike Phillips, then-acting Gov. Kaleo Moylan and Attorney General Douglas Moylan. The governor has since denied having supported the settlement.

"The District Court will have to rule on the legality of the attorney

general's attempted settlement," Camacho said yesterday. "But what we are doing today will get more money to more taxpayers for valid claims in less time."

Ilagan has said the department has not determined how the tax credit will be paid, since last year's budget process didn't include how to pay for it.

Phillips said yesterday he is pleased with the governor's action.

"As far as what he's doing, he's doing what he's required to do, and I'm very pleased that he's doing that," Phillips said.

Pacific Daily News Assistant Local News Editor Graynor Dumarol Doleno contributed to this report.